

AMENDED IN ASSEMBLY JUNE 3, 2010

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN SENATE JUNE 9, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 696

Introduced by Senator Wright

February 27, 2009

~~An act to add and repeal Section 40440.13 of the Health and Safety Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately. An act to amend Section 17560 of the Family Code, relating to child support.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. ~~South Coast Air Quality Management District: CEQA: permits.~~ *Child support: compromise of arrears.*

Existing law establishes a statewide compromise of arrears program pursuant to which the Department of Child Support Services may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to the California Work Opportunity and Responsibility to Kids Act. An offer in compromise must be rescinded and any compromised liability reestablished unless there is a finding of good cause or a determination by the director that it is in the best interest of the state to do otherwise. Existing law provides that the acceptance of an offer in compromise is

deemed to be in the best interest of the state with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard activated to United States military service, and failed to modify the support order to reflect the reduction in income.

This bill would provide that acceptance of an offer in compromise is deemed to be in the best interest of the state with regard to arrears that accrued as a result of a decrease in income when the obligor failed to modify the support order to reflect the reduction in income when an obligor was a reservist or member of the National Guard activated to United States military service, when the obligor was incarcerated for more than 90 days and does not have other sources of income, when the obligor's sole income was based on specified forms of public assistance, or when the obligor was receiving inpatient services in a medical facility for more than 90 days and does not have other sources of income.

~~(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.~~

~~Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. The South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS~~

110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would authorize the district to issue permits under specified circumstances, notwithstanding this court decision. The provisions of the bill would be repealed on May 1, 2012.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17560 of the Family Code is amended to
2 read:

3 17560. (a) The department shall establish and operate a
4 statewide compromise of arrears program pursuant to which the
5 department may accept offers in compromise of child support
6 arrears and interest accrued thereon owed to the state for
7 reimbursement of aid paid pursuant to Chapter 2 (commencing
8 with Section 11200) of Part 3 of Division 9 of the Welfare and
9 Institutions Code. The program shall operate uniformly across
10 California and shall take into consideration the needs of the
11 children subject to the child support order and the obligor's ability
12 to pay.

13 (b) If the obligor owes current child support, the offer in
14 compromise shall require the obligor to be in compliance with the
15 current support order for a set period of time before any arrears
16 and interest accrued thereon may be compromised.

17 (c) Absent a finding of good cause, or a determination by the
18 director that it is in the best interest of the state to do otherwise,
19 any offer in compromise entered into pursuant to this section shall
20 be rescinded, all compromised liabilities shall be reestablished
21 notwithstanding any statute of limitations that otherwise may be
22 applicable, and no portion of the amount offered in compromise
23 may be refunded, if either of the following occurs:

24 (1) The department or local child support agency determines
25 that the obligor did any of the following acts regarding the offer
26 in compromise:

1 (A) Concealed from the department or local child support agency
2 any income, assets, or other property belonging to the obligor or
3 any reasonably anticipated receipt of income, assets, or other
4 property.

5 (B) Intentionally received, withheld, destroyed, mutilated, or
6 falsified any information, document, or record, or intentionally
7 made any false statement, relating to the financial conditions of
8 the obligor.

9 (2) The obligor fails to comply with any of the terms and
10 conditions of the offer in compromise.

11 (d) Pursuant to subdivision (k) of Section 17406, in no event
12 may the administrator, director, or director's designee within the
13 department, accept an offer in compromise of any child support
14 arrears owed directly to the custodial party unless that party
15 consents to the offer in compromise in writing and participates in
16 the agreement. Prior to giving consent, the custodial party shall
17 be provided with a clear written explanation of the rights with
18 respect to child support arrears owed to the custodial party and the
19 compromise thereof.

20 (e) Subject to the requirements of this section, the director shall
21 delegate to the administrator of a local child support agency the
22 authority to compromise an amount of child support arrears up to
23 five thousand dollars (\$5,000), and may delegate additional
24 authority to compromise up to an amount determined by the
25 director to support the effective administration of the offers in
26 compromise program.

27 (f) For an amount to be compromised under this section, the
28 following conditions shall exist:

29 (1) (A) The administrator, director or director's designee within
30 the department determines that acceptance of an offer in
31 compromise is in the best interest of the state and that the
32 compromise amount equals or exceeds what the state can expect
33 to collect for reimbursement of aid paid pursuant to Chapter 2
34 (commencing with Section 11200) of Part 3 of Division 9 of the
35 Welfare and Institutions Code in the absence of the compromise,
36 based on the obligor's ability to pay.

37 (B) Acceptance of an offer in compromise shall be deemed to
38 be in the best interest of the state, absent a finding of good cause
39 to the contrary, with regard to arrears that accrued as a result of a
40 decrease in income when an obligor *the obligor's income when*

1 *the obligor failed to modify the support order to reflect the*
2 *reduction in income and under any of the following circumstances:*

3 (i) *The obligor was a reservist or member of the National Guard;*
4 *was activated to United States military service, and failed to modify*
5 *the support order to reflect the reduction in income. Good.*

6 (ii) *The obligor was incarcerated for more than 90 days and*
7 *does not have other sources of income.*

8 (iii) *The obligor's sole income was based on Supplemental*
9 *Security Income/ State Supplementary Payments (SSI/SSP),*
10 *CalWORKs, or any other public assistance program for which*
11 *eligibility is determined on the basis of need.*

12 (iv) *The obligor was receiving inpatient services in a medical*
13 *facility for more than 90 days and does not have other sources of*
14 *income.*

15 (2) *Good cause to find that the compromise is not in the best*
16 *interest of the state as described in paragraph (1) shall include*
17 *circumstances in which the service member's obligor's failure to*
18 *seek, or delay in seeking, the modification were not reasonable*
19 *under the circumstances faced by the service member. The director,*
20 *no later than 90 days after the effective date of the act adding this*
21 *subparagraph, shall establish rules that compromise, at a minimum,*
22 *the amount of support that would not have accrued had the order*
23 *been modified to reflect the reduced income earned during the*
24 *period of active military service under the above circumstances.*

25 ~~(2)~~

26 (3) *Any other terms and conditions that the director establishes*
27 *that may include, but may not be limited to, paying current support*
28 *in a timely manner, making lump-sum payments, and paying*
29 *arrears in exchange for compromise of interest owed.*

30 ~~(3)~~

31 (4) *The obligor shall provide evidence of income and assets,*
32 *including, but not limited to, wage stubs, tax returns, and bank*
33 *statements as necessary to establish all of the following:*

34 (A) *That the amount set forth in the offer in compromise of*
35 *arrears owed is the most that can be expected to be paid or collected*
36 *from the obligor's present assets or income.*

37 (B) *That the obligor does not have reasonable prospects of*
38 *acquiring increased income or assets that would enable the obligor*
39 *to satisfy a greater amount of the child support arrears than the*
40 *amount offered, within a reasonable period of time.*

1 (C) That the obligor has not withheld payment of child support
2 in anticipation of the offers in compromise program.

3 (g) A determination by the administrator, director or the
4 director's designee within the department that it would not be in
5 the best interest of the state to accept or rescind an offer in
6 compromise in satisfaction of child support arrears shall be final
7 and not subject to the provisions of Chapter 5 (commencing with
8 Section 17800) of Division 17, or subject to judicial review.

9 (h) Any offer in compromise entered into pursuant to this section
10 shall be filed with the appropriate court. The local child support
11 agency shall notify the court if the compromise is rescinded
12 pursuant to subdivision (c).

13 (i) Any compromise of child support arrears pursuant to this
14 section shall maximize to the greatest extent possible the state's
15 share of the federal performance incentives paid pursuant to the
16 Child Support Performance and Incentive Act of 1998 and shall
17 comply with federal law.

18 (j) The department shall ensure uniform application of this
19 section across the state.

20 ~~SECTION 1. The Legislature finds and declares all of the~~
21 ~~following:~~

22 ~~(a) As a result of the superior court decision in Natural~~
23 ~~Resources Defense Council v. South Coast Air Quality~~
24 ~~Management District (Super. Ct. Los Angeles County, 2007, No.~~
25 ~~BS 110792) holding that the South Coast Air Quality Management~~
26 ~~District (district) violated the requirements of the California~~
27 ~~Environmental Quality Act (CEQA) (Division 13 (commencing~~
28 ~~with Section 21000) of the Public Resources Code) in the~~
29 ~~promulgation of certain district rules, the district is unable to issue~~
30 ~~over a thousand pending permits that rely on the district's internal~~
31 ~~offset bank to offset emissions.~~

32 ~~(b) The district may also have to set aside several thousand~~
33 ~~permits that were previously issued in reliance on the district's~~
34 ~~internal offset bank.~~

35 ~~(c) Prompt legislative action is necessary as an interim measure;~~
36 ~~otherwise projects will be stopped from going forward or frozen~~
37 ~~in place, representing significant losses to the economy and the~~
38 ~~loss of numerous well-paying jobs.~~

39 ~~(d) Nothing in the case described in subdivision (a) requires the~~
40 ~~setting aside of any permit issued by the South Coast Air Quality~~

1 Management District to any essential public service, that relied on
2 Rule 1309.1, nor any permit that relied on Rule 1304, between
3 September 8, 2006, and November 3, 2008.

4 SEC. 2. ~~Section 40440.13 is added to the Health and Safety~~
5 ~~Code, to read:~~

6 ~~40440.13. (a) Notwithstanding the decision of the court in~~
7 ~~Natural Resources Defense Council v. South Coast Air Quality~~
8 ~~Management District (Super. Ct. Los Angeles County, 2007, No.~~
9 ~~BS 110792), the south coast district may issue permits in reliance~~
10 ~~on, and in compliance with, south coast district Rule 1304, as~~
11 ~~amended on June 14, 1996, except for an electrical generation~~
12 ~~facility, and Rule 1309.1, as amended May 3, 2002, for essential~~
13 ~~public services, as defined in subdivision (m) of Rule 1302, as~~
14 ~~amended December 6, 2002.~~

15 ~~(b) Nothing in this section affects the decision in the case~~
16 ~~described in subdivision (a) concerning the adoption, readoption,~~
17 ~~or amendment, or environmental review, of south coast district~~
18 ~~Rule 1315.~~

19 ~~(c) In implementing subdivision (a), the south coast district shall~~
20 ~~rely on the emission reduction credit tracking system used prior~~
21 ~~to the adoption of Rule 1315, until a new tracking system is~~
22 ~~approved by the United States Environmental Protection Agency~~
23 ~~and is in effect, at which point that new system shall be used by~~
24 ~~the south coast district in implementing subdivision (a). The south~~
25 ~~coast district shall make information concerning the credits, and~~
26 ~~the tracking of these credits, available to the public.~~

27 ~~(d) This section shall remain in effect only until May 1, 2012,~~
28 ~~and as of that date is repealed, unless a later enacted statute, that~~
29 ~~is enacted before May 1, 2012, deletes or extends that date.~~

30 SEC. 3. ~~The Legislature finds and declares that a special law~~
31 ~~is necessary and that a general law cannot be made applicable~~
32 ~~within the meaning of Section 16 of Article IV of the California~~
33 ~~Constitution because of unique circumstances concerning the South~~
34 ~~Coast Air Quality Management District.~~

35 SEC. 4. ~~This act is an urgency statute necessary for the~~
36 ~~immediate preservation of the public peace, health, or safety within~~
37 ~~the meaning of Article IV of the Constitution and shall go into~~
38 ~~immediate effect. The facts constituting the necessity are:~~

39 ~~Due to the court decision in Natural Resources Defense Council~~
40 ~~v. South Coast Air Quality Management District (Super. Ct. Los~~

1 ~~Angeles County, 2007, No. BS 110792), the South Coast Air~~
2 ~~Quality Management District is unable to issue over a thousand~~
3 ~~pending permits that are either exempt from offset requirements~~
4 ~~or qualified to use offset credits from the district's Priority Reserve~~
5 ~~and is required to set aside thousands of permits already issued.~~
6 ~~Therefore, in order to allow the district to issue permits in an~~
7 ~~expeditious manner as an urgent interim measure, it is necessary~~
8 ~~that this act take effect immediately.~~

O